IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 25, 2006

STATE OF TENNESSEE v. WILLIAM HENRY VAUGHAN, IV

Direct Appeal from the Circuit Court for Maury County
No. 14589 Stella Hargrove, Judge

No. M2004-01718-CCA-R3-CD - Filed August 16, 2006

Defendant's first trial resulted in his conviction of the offenses of premeditated first degree murder and aggravated arson which were committed in Giles County. On appeal, this Court reversed Defendant's convictions and remanded for a new trial because Defendant was deprived of his constitutional right to testify and because the trial court erred in admitting certain information into evidence. *State v. Vaughan*, 144 S.W.3d 391 (Tenn. Crim. App. 2003). Venue for Defendant's new trial was changed to Maury County. At the conclusion of the second trial, the jury again found Defendant guilty of premeditated first degree murder and aggravated arson. Defendant was sentenced to life with the possibility of parole for his murder conviction. Following a sentencing hearing, the trial court sentenced Defendant to twenty years for his aggravated arson conviction and ordered this sentence to be served consecutively to his life sentence. On appeal, Defendant argues that (1) the trial court erred in admitting certain items and testimony into evidence; (2) the evidence was insufficient to support Defendant's convictions; and (3) the trial court erred in imposing consecutive sentencing. After a thorough review of the record, we affirm the judgments of the trial court.

Tenn. R. App. P. 3, Appeal as of Right; Judgments of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JERRY L. SMITH and JAMES CURWOOD WITT, JR., JJ. joined.

Hershell D. Koger, Pulaski, Tennessee, for the appellant, William Henry Vaughan, IV.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; T. Michel Bottoms, District Attorney General; Patrick A. Butler, Assistant District Attorney General; and Robert Sanders, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

Around 3:00 a.m. on Wednesday, April 19, 2000, two men in a sports utility vehicle flagged down Lieutenant Tommy Chapman, with the Giles County Sheriff's Office, while Lieutenant Chapman was on patrol, to report a house fire. Lieutenant Chapman turned onto Sam Davis Avenue and saw flames coming out of the house belonging to Sherry Agee Vaughan, Defendant's mother and the victim in this case. Lieutenant Chapman testified that the fire was primarily located in the rear southwest corner of the second floor. The front door of the house was unlocked, and Lieutenant Chapman began to search for any residents that might be in the house. When he did not hear a response to his calls, Lieutenant Chapman attempted to climb the stairs to the second floor but was unsuccessful because of the flames.

On cross-examination, Lieutenant Chapman acknowledged that there was little traffic in Pulaski at that time of the morning, and he did not notice any speeding vehicles. Lieutenant Chapman said that the two men in the SUV were never identified.

Officer Kyle Helton, with the Pulaski Police Department, responded to Lieutenant Chapman's call for assistance. He confirmed that the fire in the house was burning primarily in the southwest corner of the second floor. On cross-examination, Officer Helton acknowledged that he had not noticed any unusual activity before the fire. Officer Helton knew Defendant, and he did not see him in Pulaski during the hours preceding the fire.

Chief James Stewart Thompson, with the Pulaski Fire Department, testified that the fire department received the call about the burning house at 3:15 a.m. When Chief Thompson arrived at the scene, Donald Collins, an engineer with the fire department, told him that there was someone in the house. The victim was subsequently located in her bedroom on the second floor in the southwest corner of the house. The heat and flames from the fire initially hindered the firemen's attempts to retrieve the victim's body, but the body was eventually removed from the burning house through an upstairs window.

Based on the results of the various investigations conducted in the victim's house, Chief Thompson testified that he believed the fire was intentionally started with gasoline in the victim's bedroom. He stated that the team did not detect the presence of any accelerants downstairs, and the fire damage to the first floor was confined primarily to the rear of the house.

On cross-examination, Chief Thompson acknowledged that a second home in the victim's historic neighborhood was destroyed by fire about two weeks after the fire in the victim's house. Chief Thompson said that fire had also been intentionally set, but the perpetrators had not been identified at the time of Defendant's trial.

Captain John Dickey, with the Pulaski Police Department, testified that it was routine procedure to perform an autopsy on a victim who dies as a result of a fire. Captain Dickey said that he received word late Thursday afternoon, April 20, 2000, from Dr. Charles Harlan, the Giles County Medical Examiner, that the victim had a contact gunshot wound on her right temple. Captain Dickey said that it was his experience that such a wound could be consistent with a self-inflicted gunshot, and he met with family members on Friday morning to gauge the family's reaction to the possibility of suicide. Defendant did not attend the meeting. Captain Dickey said that the family rejected the idea that the victim had committed suicide, and no one believed that the victim had ever owned a firearm.

Captain Dickey gathered a team of police officers and firemen together later Friday morning and began to search the victim's bedroom for a gun or spent bullet casings. As the team sifted through the ashes and debris, Officer Michael Hatfield, with the Pulaski Police Department, found the victim's nightgown. Officer Hatfield and other officers attempted to remove the mattress from the victim's bed, but it fell apart, releasing a strong odor of gasoline. The presence of gasoline was also detected on a braided rug at the foot of the bed, and on the bedding itself. Mr. Collins testified that he detected two or three burn patterns, or charred spots, on the bedroom floor.

Captain Dickey said that he spoke with "Jimbo" Jones on Friday afternoon, and Mr. Jones told Captain Dickey that he had seen Defendant with a .25 caliber gun a few days prior to the fire. Captain Dickey called Dr. Harlan and confirmed that the victim's bullet wound was consistent with a .25 or .32 caliber bullet. Captain Dickey sent Investigator Victoria Maddox to locate Defendant and ask him to come to the police station for an interview. Defendant arrived around 6:30 p.m. on Friday.

Captain Dickey told Defendant at the beginning of the interview that he was aware that Defendant owned a gun. Defendant acknowledged that he had a .25 caliber semi-automatic gun in his car which he had purchased that morning (Friday, April 21, 2000) and agreed to show Captain Dickey the gun. Defendant retrieved the gun from a bag in the front seat of his car. Captain Dickey confirmed that the gun was new and asked Defendant if he had a permit to carry the gun. Defendant apologized and said that he did not, and Officer Dickey told Defendant he would have to take possession of the gun. Captain Dickey discovered a box of .25 caliber ammunition in Defendant's car. Five rounds were missing from the box which was consistent with the number of rounds in the magazine of Defendant's gun.

Captain Dickey and Defendant returned to the interview room, and Defendant consented to a search of his car. Lieutenant Dean Glossup and Investigator Maddox conducted the search while Captain Dickey continued Defendant's interview. Defendant told Captain Dickey that he had owned another .25 caliber gun prior to owning the one found in his car, but he lost the first .25 caliber gun while he was fishing on Buchanan Creek a few days before the fire. Defendant told Captain Dickey that he had purchased the lost gun at Golden's Pawn Shop in Lewisburg. In a few minutes, Lieutenant Glossop called Captain Dickey out of the room and informed him that he and Investigator Maddox detected a strong odor of gasoline in the interior of Defendant's car. Defendant initially said

that he did not know why his car smelled of gasoline. Then Defendant told Captain Dickey that he had recently rented a U-Haul truck which had broken down. Defendant said that he transported gasoline-filled plastic jugs to the truck in his car in an attempt to restart the truck. Defendant said that gasoline must have spilled out of the containers into his car during transport.

Defendant surrendered the keys to his car, and Investigator Maddox parked the vehicle in a garage. A search warrant was obtained on Monday, April 24, 2000. Officers found a plastic gasoline jug, an aerosol can of disinfectant, a sealed compact disc, and an extra fuel spout for a plastic gasoline jug in the trunk of Defendant's car.

On Saturday, April 22, 2000, Captain Dickey confirmed that Golden's Pawn Shop was in Murfreesboro, not Lewisburg, and contacted the T.B.I. for assistance in locating any recent gun purchases in Defendant's name. According to the T.B.I.'s records, Defendant purchased a PIC .25 caliber semiautomatic gun at Pawns Unlimited in Lewisburg on Friday, April 14, 2000, five days before the fire.

On cross-examination, Captain Dickey acknowledged that several items in addition to the ones confiscated were also found in Defendant's car, including a vacuum cleaner, shoes, clothes, and a box of detergent. Captain Dickey said that he verified that Defendant had rented a U-Haul truck on April 11, 2000, and that the truck had broken down while in Defendant's possession. Captain Dickey said that a search of Defendant's home did not reveal any physical evidence connected with the fire. The investigating officers, however, found a Wal-Mart receipt for a box of Winchester ammunition dated April 14, 2000, issued at 5:10 p.m., and a Big Lots receipt dated April 19, 2000 for the purchase of a compact disc and a 12-ounce spray of disinfectant. Captain Dickey stated that he also searched the overgrown area behind the victim's house.

On redirect, Captain Dickey said that a team searched for the lost gun in and around Buchanan Creek but were unsuccessful in locating the weapon.

Dr. Harlan testified that the victim had sustained third degree burns on fifty percent of her body, and fourth degree burns on the remaining portions of her body. The burns, however, were suffered postmortem. Dr. Harlan testified that the cause of the victim's death was a gunshot wound to the right temple. The presence of powder on the outer surface of the victim's skull was consistent with a contact gunshot wound to the temple. Dr. Harlan was able to recover the bullet. On cross-examination, Dr. Harlan said that he could not estimate the victim's time of death with any specificity, but he testified that the victim had been dead between minutes or hours of the commencement of the fire, but not days.

Officer Hatfield stated that he was taking a break on Friday in the front yard of the victim's house when Defendant approached him and asked him if he was the investigator in charge of the team. Officer Hatfield told Defendant he could summon the investigator, but Defendant turned and left the yard before he could do so.

Investigator Maddox was part of the search team on Friday and in charge of the samples taken from the victim's bedroom. On cross-examination, Investigator Maddox identified a note found on a table in the dining room by a member of the search team. Investigator Maddox acknowledged that the note read: "Hi, mom. Will here. Just wanted to let you know I love you. I hope you had a good vacation. My new number is 615-258-2867." Investigator Maddox acknowledged that a response was written beneath the note stating: "Will, for you. Had a great time. I will be coming up on Good Friday to go to church at noonish. Plan on having you join me if you can for that and Easter at Athens. Let me know. X X O O."

James Ed "Jimbo" Jones testified that he saw Defendant on Saturday, April 15, 2000, at a service station in Pulaski. Mr. Jones said that he had known Defendant since he was a child. Mr. Jones asked Defendant what he was doing lately, and Defendant told him that he was going to school and working part-time as a security guard. Defendant said that he had just returned from firing his gun at his grandfather's farm. Mr. Jones, a gun collector, asked to see Defendant's gun. Defendant pulled a gun out of a bag in the front seat of his car. Mr. Jones identified the gun as a .25 caliber semiautomatic weapon. On cross-examination, Mr. Jones agreed that Defendant did not exhibit any reluctance in showing him the gun.

Special Agent Wayne Wesson, with the T.B.I., contacted Pat Callahan at Pawns Unlimited in Lewisburg. Ms. Callahan verified that Defendant had purchased a PIC .25 caliber semiautomatic gun on April 14, 2000. According to her records, the gun was received by Pawns Unlimited from Harold Lee Miller, III. Special Agent Wesson and Special Agent Vance Jack located Mr. Miller at his work place in Marshall County. Mr. Miller said that he had fired the PIC gun at his home before he pawned it. Mr. Miller escorted the agents back to his residence and showed them an old aluminum door which he had used for target practice. The door had two bullet holes in the frame, and the agents were able to locate one of the bullets in the ground beneath the door. Special Agent Jack testified that the bullet was in good condition with only a slight indentation on the nose.

Mr. Miller testified that he pawned the PIC .25 caliber semiautomatic gun to Pawns Unlimited in January 2000. Mr. Miller said that he did not redeem the gun because it had a tendency to jam on the second or third round. Mr. Miller confirmed that he discharged the gun into an aluminum door at his residence about five times because he wanted to make sure the gun was unloaded before he pawned it.

Special Agent Steve Scott, with the T.B.I., was qualified as an expert in the area of firearms identification. He compared the bullet retrieved from the victim's body with the bullet retrieved from Mr. Miller's residence. Special Agent Scott testified that there was no question in his mind that the two bullets were fired by the same weapon. Special Agent Dan Royse verified Special Agent Scott's testing procedures and concurred that the bullets were discharged from the same weapon. Special Agent Scott said that fourteen possible companies, including PIC, could have manufactured the bullets based on the bullets' general rifling characteristics.

Edward Hueske, a forensic scientist, was also qualified as an expert in the field of firearms identification. Mr. Hueske stated that he provided specialized training to police agencies primarily in the areas of crime scene and shooting reconstruction, and provided consultation services in civil and criminal matters. Mr. Hueske examined the bullet from the victim's body and the bullet retrieved from Mr. Miller's residence. Based on his analysis, Mr. Heuske testified that the two bullets were "100%" fired from the same gun.

On cross-examination, Mr. Hueske was qualified as an expert in the area of blood stain pattern analysis. Mr. Hueske testified that he would expect to see back spatter from a wound caused by a .25 caliber weapon, but the distance the back spatter would travel depended on such factors as the thickness of the victim's hair. Mr. Hueske said that previous tests, which involved discharging a .25 caliber gun into a dummy's head, resulted in back spatter on the lower part of the shooter's shirt which was visible to the eye. Mr. Hueske said, however, that the dummy was not wearing a wig. On redirect examination, Mr. Hueske said that in his test the dummy was in an upright position, and a horizontal position would affect the spread of blood spatter. Mr. Hueske said that it was possible not to find any spatter from a wound made by a .25 caliber gun.

Larry Beaty, an employee of Gun City, USA, in Nashville, identified two charge transactions by Defendant on April 21, 2000. The first charge was for the purchase of a Phoenix Arms, .25 caliber gun. Mr. Beaty said that the second charge in the amount of $82.08 was probably for ammunition.

Robert Wilson, a K-9 officer with the bomb and arson section of the State Fire Marshall's Office, searched Defendant's car and the victim's house between April 24 and April 26, 2000 with a dog trained to detect accelerants. Officer Wilson testified that the dog detected the presence of accelerants on the floor mats located in the rear passenger side and front driver's side of Defendant's vehicle. The dog also detected accelerants on a coat and shirt in the back seat of Defendant's car.

Officer Wilson stated that there was still a heavy odor of gasoline in the victim's bedroom when he conducted his examination of the burned house. Based on his analysis of the scene, Officer Wilson testified that there had been two separate fires, both intentionally started by a flammable liquid. One fire was set in the rear bedroom located in the northwest corner of the first floor, and the second fire was started in the victim's bedroom. The pour patterns indicated a floor level fire in both rooms. Officer Wilson concluded that the pour pattern in the victim's bedroom extended from around the bed to the southeast window and continued to the southwest window of the room. The bedframe suffered structural damage from the exposure to high temperatures, and an odor of gasoline was detected in the bedding.

Special Agent Terra Barker, a forensic scientist with the T.B.I. crime lab specializing in the analysis of fire debris, testified that her analysis of the following items recovered from Defendant's vehicle revealed the presence of a gasoline range product in an evaporated state: a floor mat from the rear passenger side of Defendant's vehicle; a sample of carpet from the floor beneath the driver's seat; the floor mat on the front driver's side of the vehicle; and a uniform bearing the logo of

Dynamic Securities consisting of a coat, shirt, and pair of pants. The presence of a gasoline range product in an evaporated state was present on the pillow case, nightgown, pillow, and mattress feathers taken from the victim's bedroom.

On cross-examination, Special Agent Barker stated that her analysis does not determine the quantity of gasoline on the items tested, or the brand of gasoline used. Special Agent Barker acknowledged that she only tested those items from Defendant's vehicle on which the K-9 dog had detected the presence of an accelerant. On redirect, Special Agent Barker stated that her analysis revealed that it took between seven to ten days for the gasoline on the tested items to entirely evaporate when exposed to the elements.

Santiago McKlean, the general manager of the U-Haul Store located on Eighth Avenue South in Nashville, identified a rental agreement signed by Defendant on April 11, 2000 for the rental of a U-Haul diesel truck for a twenty-four hour period. Mr. McKlean said that there were signs on the truck alerting drivers that the truck used diesel fuel only, including the visor on the driver's side and above the fuel tank. Mr. McKlean said that it was also his normal procedure to orally instruct a customer not to put gasoline into the truck. When Defendant did not return the truck as arranged, Mr. McKlean contacted him. Defendant said he had been involved in an accident, and the truck was located on the interstate. Mr. McKlean dispatched a wrecker service to the location described by Defendant, but the driver was unable to find the truck. Mr. McKlean said that he believed officers from the Nashville Metro Police Department found the truck and impounded it. Mr. McKlean said that the truck had to be repaired because Defendant had put gasoline into the fuel tank rather than diesel fuel.

Thomas Powers, the owner of the towing service contacted by Mr. McKlean, testified that Mr. McKlean asked him to tow a U-Haul truck left by one of his customers on the Murfreesboro Road entry ramp to Interstate 24. Mr. Powers was unable to find the truck. Mr. Powers said that three or four days later, he happened to pass Martin's Wrecker Service where he noticed a U-Haul truck parked on the company's lot. Mr. Powers called Mr. McKlean and verified that the parked truck was Defendant's missing truck. The truck would not start, and Mr. McKlean directed Mr. Powers to tow the truck to his facility and repair it. Mr. Powers said that the truck would not start because gasoline had been put into the truck's fuel tank. He drained eighteen or nineteen gallons of fuel from the tank, which consisted primarily of gasoline. Mr. Powers said that there was a red plastic gasoline container on the passenger side floorboard.

Linda Sue McWilliams, the manager of the Big Lots store in Franklin, identified a receipt issued to Defendant at 6:22 p.m. on April 19, 2000, for the purchase of a compact disc and a 12-ounce spray can of disinfectant.

Mary Burden, Defendant's co-employee at Dynamic Security Services, testified that she and Defendant worked from 5 p.m. to midnight on April 18, 2000, at the company's location on the premises of Deloitte & Touche LLP, in Nashville. Ms. Burden said that it was their job to monitor the floors of the office building and escort Deloitte employees after dark to their cars parked in

Deloitte's off-site parking lot. Ms. Burden said Dynamic employees used a flashlight if they had to go to the parking lot. Ms. Burden confirmed that Defendant was wearing his uniform and company-issued badge during the shift. Ms. Burden said that she worked on April 19, 2000, from 7:00 a.m. to noon. Ms. Burden said that during her shift she noticed that one of the flashlights was missing from the front desk after she arrived at work that morning. Ms. Burden said that Defendant returned the flashlight to James Rutherford, another Dynamic Security employee, at some point after the victim's death. On cross-examination, Ms. Burden acknowledged that Defendant did not seem to be in a hurry to leave at the end of his shift around midnight on April 19, 2000.

Jefferson Bruce Asher, a Dynamic Security employee assigned to the Deloitte location, testified that he received a telephone call from Defendant's father during his afternoon shift on April 19, 2000. Defendant reported for work between 4:00 p.m. and 5:00 p.m. Mr. Asher told Defendant to call his father. Mr. Asher said that when he talked to his father, Defendant's face "[j]ust had a blank expression. Just no emotion, no nothing."

Investigator Joel Robinson, with the Pulaski Police Department, was one of the officers who arrested Defendant at his residence in Nashville on April 26, 2000. Defendant was read his *Miranda* rights and transported back to Pulaski. The patrol car was wired with a recording device. The taped conversation between Defendant and Investigator Robinson during the ride to Pulaski was introduced as an exhibit and played for the jury. At one point the following conversation occurred:

[DEFENDANT]: Ah, man, I can't believe this.

[ROBINSON]: What's that?

[DEFENDANT]: I just can't believe this. They haven't turned up anything else or anything different or . . .?

[ROBINSON]: They haven't turned up anything else what?

[DEFENDANT]: I don't know, never mind. I probably shouldn't. I just can't believe this. Joey, you mind if I ask you a question?

[ROBINSON]: Go ahead, man.

[DEFENDANT]: Do they think they have enough evidence for a trial against me or, they just, am I just . . .?

[ROBINSON]: Nah, yeah, they think they do [inaudible]. If they didn't we wouldn't be coming to pick you up.

[DEFENDANT]: I could understand them once they searched my apartment, but I mean . . . .

Investigator Robinson then steered the conversation away from the circumstances surrounding Defendant's arrest.

On cross-examination, Investigator Robinson confirmed that the investigating officers questioned Defendant's neighbors about his whereabouts on April 18 and 19, 2000, and that no one had any relevant information or could verify whether or not Defendant had been home on those dates.

The State rested its case-in-chief, and Defendant presented the following testimony.

Margaret Bash, a special agent with the T.B.I. crime lab, was qualified as an expert in the field of forensic serology. Special Agent Bash testified that she examined Defendant's uniform consisting of a coat, a shirt, and a pair of pants which was found in the back seat of his vehicle, and found no traces of blood on any of the items of clothing. Special Agent Bash said that the clothes had not been newly laundered. On cross-examination, Special Agent Bash acknowledged that it was possible for an individual wearing a short-sleeved shirt to fire a contact shot into another person's temple and not get any blood spatter on the shooter's shirt.

Defendant testified that he was thirty-years old at the time of the trial. His family moved to Pulaski when he was twelve years old, and he lived at the house on Sam Davis Avenue with his mother and younger sister until he left home. Defendant said that he always considered his mother's house as "home," and frequently stayed overnight at the house. Defendant's younger sister was a student at The University of Tennessee at Knoxville, and she was at school at the time of the fire.

Defendant said that he moved from Murfreesboro to Nashville in April 2000, to shorten his commute to work. Defendant said that he rented a U-Haul truck for the move. Defendant stated that it just "didn't register" when Mr. MacKlean told him that the truck operated on diesel fuel. He said that he put $5.00 worth of gasoline into the truck, drove for a small distance, and then the truck quit and would not start up again. Defendant walked to a gas station and bought approximately one gallon of gasoline which he put into the truck's fuel tank, but the truck still would not start. Defendant walked back to the U-Haul business on Eighth Avenue South, but it was closed. Defendant retrieved his car and drove home.

The next morning, Defendant returned to the U-Haul business and told Mr. McKlean that the truck had broken down and was on the Murfreesboro Road entry ramp to Interstate 24. Defendant said that Mr. McKlean told him that it would take between $200 and $300 to fix the truck. Defendant thought, "oh, goodness," and decided to try again to fill the fuel tank with gasoline. He bought a second plastic gasoline container and filled up both containers five or six times, and carried the containers in his car to the truck. Defendant emptied the containers into the truck's fuel tank, and poured gasoline on what he thought was the truck's carburetor because he had heard that sometimes helped a vehicle start. Defendant said that the truck still would not start, and he gave up. Defendant put one of the plastic containers in his car trunk and left one in the U-Haul truck.

Defendant said that his new apartment was on Douglas Avenue in Nashville, and he did not believe that the neighborhood was very safe. He bought the PIC .25 caliber gun for his own protection when he drove through Lewisburg one day.

Defendant said that he drove to Pulaski after he got off work on Monday, April 17, 2000, and spent the night at his mother's house. The victim was asleep when he arrived, and she had left for work by the time he got up the next morning. Defendant wrote the victim a note before he went to bed and left it on the dining room table. His mother replied to his note and left him a tee-shirt which she had bought in Panama City, Florida on her vacation. Defendant stopped by Giles County High School where the victim worked as a guidance counselor on his way out of town on Tuesday, April 18, 2000. Defendant said that he wanted to let his mother know that he could attend church services with her on Easter.

Defendant said he was "very shocked" when his father told him over the telephone on April 19, 2000, about the victim's death. He said, "So I think any expression I had on my face would be one of shock." Defendant changed out of his uniform and began to drive to Pulaski. He stated, "About the time I got to Franklin, I got a little bit – I got a little bit nervous and shaky. You know, the news finally hit me. I finally understand it. And I was just like, gosh, I have got to pull over because my – you know my arm started shaking and I couldn't drive." Defendant decided to go into Big Lots to walk around and "calm down." Defendant said he bought the spray can of disinfectant on impulse. The compact disc was on special at the check-out counter, and he "just threw it in there with the spray disinfectant."

Defendant drove to the victim's house on Wednesday night. Family members were sifting through the salvageable items. Defendant said he had spent the previous Saturday night, April 15, 2000, at his mother's house after he had gone to Buchanan Creek to fish and test fire his PIC .25 caliber handgun which he had purchased that day. Defendant said that he put the gun on a dresser in his bedroom before he went to sleep. While the family was cleaning up the victim's house on Wednesday night, Defendant searched for his gun, but he could not find it. Defendant explained his responses to Captain Dickey's questions on April 21, 2000, about the whereabouts of the PIC handgun as follows: "At that point in time, I told [Captain Dickey] maybe I left it, you know, my gun, the backpack and the bullets at Buchanan Creek. And I didn't leave . . . them at the house like I thought because, you know, I was confused. . . . Since that time, I think somebody has come in and taken the gun and bullets. And I think they were stolen. At the time of the interview, I didn't really think that [the gun] had been stolen. I was still sort of – the whole situation was still new to me. And so, you know, it didn't pop right into my head that somebody could have come in and stole it, you know."

Defendant said that his mother usually left the doors to the house unlocked, and he did not have a key. If the doors were locked, then Defendant's grandmother let him in. Defendant said that before the fire his mother left the back door unlocked at night because the carpenter who was doing some remodeling on the house arrived early. Defendant said that his mother kept a container of gasoline for the weed eater and lawn mower underneath the deck.

Defendant said that on Friday morning, April 21, 2000, he bought a new .25 caliber handgun at Gun City USA in Nashville. The receipt for the gun purchase was issued at 12:02 p.m. Defendant drove to Pulaski after he bought the gun. When Defendant arrived at his grandmother's house, his sister told him that their mother had been shot. Defendant said that he went to the police station at Captain Dickey's request because he "wanted to . . . help them anyway he could."

Defendant said that he had a variety of cleaning supplies in his car when it was searched. He said that the gasoline container in his truck was one of the containers used to transport fuel to the broken down U-Haul truck. Defendant said the cap to the spout was missing, and that was why gasoline fumes were detected on his uniform. Defendant explained that the gasoline fumes on the floor mats and carpet of the car's interior were "possibly" caused by spills from the two gasoline containers he transported to the U-Haul truck. Defendant said that on one of his trips to the gas station, he found a discarded gas spout in a dumpster and threw it in his car because he thought it might be useful some day.

Defendant said that one of his duties with Dynamic Security was to escort the Deloitte and Touche employees to their cars on the company's off-site parking lot. Defendant carried a flashlight in case someone needed a light to find keys or unlock the car. Defendant admitted that he sometimes kept the flashlight in his car between shifts instead of returning it to the front desk, "and nobody ever noticed it."

Defendant explained that he told Captain Dickey that he was not really sure of the name of the pawn shop in Lewisburg in which he bought his first .25 caliber handgun, but he thought it was Golden's Pawn Shop. Defendant said, "I told [Captain Dickey] to look it up. But it wasn't an attempt to lie to the police when I said Golden's."

On cross-examination, Defendant explained that the gasoline must have spilled on his uniform after the fire because he was wearing his uniform when his father called about his mother's death, and he did not notice any gasoline odor on his clothes at that time. Defendant said he changed out of his uniform and threw the uniform into the trunk of his car with some other clothes. Defendant said he was looking through the items in his trunk on Thursday afternoon or Friday morning and smelled gasoline on the uniform. He put the uniform into his back seat so that he would remember to have the uniform cleaned.

Defendant denied that he told Captain Dickey that he was "100% sure" that he left his gun at Buchanan Creek. He denied throwing away the bullets to the gun, and said that he put the bullets in his backpack which was also missing after the fire. Defendant acknowledged that he was not aware that a diesel truck does not have a carburetor. Defendant said that he did not think about his gun when he left his mother's house on Sunday, April 16, 2000. Defendant said that he searched Buchanan Creek for the gun two or three times but never found it.

II. Sufficiency of the Evidence

Defendant argues that the evidence as to his involvement in the offenses was circumstantial only, and that there were insufficient facts and circumstances from which the jury could find beyond a reasonable doubt that he was the perpetrator of the charged offenses.

In reviewing Defendant's challenge to the sufficiency of the convicting evidence, we must review the evidence in a light most favorable to the prosecution in determining whether a rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979). Once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Black*, 815 S.W.2d 166, 175 (Tenn. 1991). The defendant has the burden of overcoming this presumption, and the State is entitled to the strongest legitimate view of the evidence along with all reasonable inferences which may be drawn from that evidence. *Id.; State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). The jury is presumed to have resolved all conflicts and drawn any reasonable inferences in favor of the State. *State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984). Questions concerning the credibility of witnesses, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

Defendant was convicted of first degree premeditated murder and aggravated arson. Defendant does not challenges the sufficiency of the evidence supporting the elements of each offense, but rather argues that the evidence is insufficient to prove his identity as the perpetrator of the offenses. The identity of the perpetrator is an essential element of any crime. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citing *State v. Thompson*, 519 S.W.2d 789, 793 (Tenn. 1975)). Although the evidence of Defendant's involvement in the offenses is circumstantial in nature, "[s]ufficient proof of the perpetrator's identity may be established through circumstantial evidence alone." *Rice*, 184 S.W.3d at 662. The circumstantial evidence, however, must be not only consistent with the guilt of the accused, but it must also be inconsistent with innocence and must exclude every other reasonable theory or hypotheses except that of guilt. *State v. Tharpe*, 726 S.W.2d 896, 900 (Tenn. 1987). In addition, "'it must establish such a certainty of guilt of the accused as to convince the mind beyond a reasonable doubt that [the defendant] is the one who committed the crime.'" *Id.* (quoting *Pruitt v. State*, 460 S.W.2d 385, 390 (Tenn. Crim. App. 1970)). "A conviction may be based entirely on circumstantial evidence where the facts are so 'clearly interwoven and connected that the finger of guilt is pointed at the Defendant and the Defendant alone.'" *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2005) (quoting *State v. Smith*, 868 S.W.2d 561, 569 (Tenn. 1993)).

Viewing the evidence in a light most favorable to the State, the proof established that the victim died of a single gunshot wound to the right temple while she was asleep in her bedroom sometime in the early morning hours of April 19, 2000. There was no sign of a forced entry into the victim's house, and no indication of a struggle before the victim was shot. The bullet was fired from

the .25 caliber handgun purchased by Defendant on Friday, April 14, 2000 in Lewisburg. Mr. Jones testified that he saw Defendant in Pulaski on Saturday, April 15, 2000, and Defendant showed him the newly purchased handgun.

Ms. Burden testified that Defendant worked from 5:00 p.m. to midnight on April 18, 2000, and that he was dressed in his company uniform. When Ms. Burden arrived at her workplace the next morning, April 19, 2000, she noticed that one of the flashlights used to escort the Deloitte employees to their cars was missing. Defendant returned the flashlight to James Rutherford at some point after the victim's death. Defendant spoke with his father after he arrived at work on April 19, 2000, at approximately 5:00 p.m. Defendant's father told Defendant about the fire and his mother's death. Mr. Asher said that Defendant did not show any emotion during his telephone conversation with his father.

Officers Helton and Chapman testified that when they responded to the report of a fire at the victim's house at approximately 3:15 a.m. on April 19, 2000, the fire was primarily contained in the southwest corner of the second floor where the victim's bedroom was located. The proof established that two separate fires were started with gasoline in the victim's house. One fire was set in the rear bedroom located in the northwest corner of the house, and the second fire was started in the victim's bedroom in the southwest corner of the house. The burn patterns in both rooms indicated floor level fires. Officer Wilson testified that the perpetrator poured gasoline from the doorway of the victim's bedroom, in and around the furniture, and on the bed and bedding itself.

At noon on Friday, April 21, 2000, Defendant purchased a second handgun of the same caliber as the gun purchased on April 14, 2000. Samples and items taken from Defendant's vehicle on April 21, 2000, revealed the presence of a gasoline range product on the shirt, pants and coat comprising his Dynamic Security Services' uniform; the floor mat and carpet from the driver's side of the vehicle, and the floor mat from the vehicle's back seat. A plastic gasoline container was found in Defendant's trunk along with a spray can of disinfectant and a spare fuel spout designed for use with a plastic gasoline container.

In his direct examination, Defendant offered explanations for his activities preceding and after the victim's death. The jury, however, decides the weight to be given to circumstantial evidence, and "[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury." *Marable v. State*, 203 Tenn. 440, 313 S.W.2d 451, 457 (1958) (citations omitted). By its verdict, the jury obviously accredited the testimony of the State's witnesses and discredited Defendant's explanations, as was its prerogative. Viewing the evidence in a light most favorable to the State, we conclude that a rational trier of fact could conclude beyond a reasonable doubt that Defendant was the perpetrator of the offenses of first degree premeditated murder and aggravated arson. Defendant is not entitled to relief on this issue.

III. Motion to Suppress

Defendant argues that he did not consent to the investigating officers' initial search of his vehicle on April 21, 2000, and the search therefore violated the Fourth Amendment of the United States Constitution and Article I, Section 7 of the Tennessee Constitution. Defendant contends that because this warrantless search violated his constitutional rights, any information gleaned from the initial impermissible search could not be used to support a finding of probable cause for the subsequent search of his vehicle pursuant to a search warrant.

Defendant's issues were raised and decided in Defendant's first appeal. *See Vaughan*, 144 S.W.3d at 403. In *Vaughan*, this Court concluded that "the evidence adduced at the hearing on the suppression motion and at the trial supports the trial court's conclusion that the Defendant consented to having his car searched during his interview with Lieutenant Dickey and Investigator Maddox." *Id*. Because the initial search was consensual, we also concluded that Defendant's challenge to the subsequent search warrant was "also without merit." *Id.*

Under the "law of the case" doctrine, when an initial appeal results in a remand back to the trial court, the decision of the appellate court established the law of the case, which must be followed on remand by a trial court and an appellate court upon a second trial and appeal. *See State v. Jefferson*, 31 S.W.3d 558, 560-61 (Tenn. 2000) (citing *Memphis Publ'g Co. V. Tenn. Petroleum Underground Storage Tank Bd.* 975 S.W.2d 303, 306 (Tenn. 1998)). In *Memphis Publ'g Co.*, our Supreme Court observed that the "law of the case" doctrine

> is a longstanding discretionary rule of judicial practice which is based on the common sense recognition that issues previously litigated and decided by a court of competent jurisdiction ordinarily need not be revisited. This rule promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts. . . . There are limited circumstances which may justify reconsideration of an issue which was [an] issue decided in a prior appeal: (1) the evidence offered at a trial or hearing after remand was substantially different from the evidence in the initial proceeding; (2) the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand; or (3) the prior decision is contrary to a change in the controlling law which has occurred between the first and second appeal.

Memphis Publ'g. Co., 975 S.W.2d at 306.

Defendant does not allege than any one of the three circumstances exists which would permit reconsideration of his issue. *See Jefferson*, 31 S.W.3d at 561 (The defendant failed to show that his case fell within one of the three exceptions). We observe, however, that Defendant testified at the suppression hearing prior to his second trial although it appears he did not testify at his first suppression hearing. Based on our review, we see nothing in Defendant's testimony at the second

suppression hearing, or the proof offered at the second trial, that would meet the *Memphis Publish'g* criteria for reconsideration of his suppression issue. *See State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998) (Holding that court may consider the proof at trial, as well as at the suppression hearing, when considering the appropriateness of the trial court's ruling on a pretrial motion to suppress). Nonetheless, even had Defendant alleged that his testimony at the second suppression hearing constituted "substantially different" evidence as contemplated by *Memphis Publ'g*, he would not be entitled to relief on this issue.

A trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). However, the application of the law to the facts is a question of law which is reviewed *de novo* on appeal. *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

Following Defendant's second suppression hearing, the trial court found

> that based upon the testimony that [the court] heard yesterday listening to [Captain Dickey and Investigator Maddox] who testified, listening to the testimony of the defendant, judging the credibility of those witnesses before the Court, the Court finds specifically today that this defendant did give consent to search the vehicle. The Court has considerable difficulty with the credibility of [Defendant] on that issue yesterday. The Court finds that the consent to search was given freely, voluntarily, unequivocally, specifically, intelligently given.

Based on our review of the record, we conclude that the evidence does not preponderate against the trial court's finding that Defendant consented to the search of his car, and his consent was voluntarily and intelligently given.

IV. Evidentiary Issues

Defendant challenges the trial court's evidentiary rulings pertaining to the introduction of the .25 caliber gun purchased on April 21, 2000; testimony concerning the missing flashlight at Defendant's place of work; and testimony concerning Defendant's facial expressions, or lack thereof, during his telephone conversation with his father on April 19, 2000. Defendant contends that this evidence was not relevant to a material issue at trial. Defendant argues that the jury could draw no reasonable inferences from the challenged evidence, thereby inviting the jury to engage in impermissible speculation or conjecture. Alternatively, Defendant contends that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. *See* Tenn. R. Evid. 401, 402, 403.

The admissibility of evidence is generally within the sound discretion of the trial court. *State v. Saylor*, 117 S.W.3d 239, 247 (Tenn. 2003). The threshold determination is whether or not the proffered evidence is relevant. Pursuant to Rule 401 of the Tennessee Rules of Evidence, evidence is deemed relevant if it has "any tendency to make the existence of any fact that is of consequence

to the determination of the action more probable or less probable than it would be without the evidence." *See State v. Forbes*, 918 S.W.2d 431, 449 (Tenn. Crim. App. 1995). Even relevant evidence, however, may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Tenn. R. Evid. 403. "When arriving at a determination to admit or exclude even that evidence which is considered relevant, trial courts are generally accorded a wide degree of latitude and will only be overturned on appeal when there is a showing of abuse of discretion." *Saylor*, 117 S.W.3d at 247.

Although standing alone, a particular piece of evidence may be of questionable relevance, the evidence may still be admissible if it becomes relevant when taken in connection with other evidence. *State v. Ivey*, 210 Tenn. 422, 431-432, 360 S.W.2d 1, 4 (1962). In addition, it is not enough for the State "'merely to show that [a fact] may have been, but [the State] must go further and furnish some logical basis for the inference that it was or is.'" *Id*., 360 S.W.2d at 5 (citation omitted).

The State's theory at trial was that Defendant left work shortly after midnight on April 19, 2000, drove to Pulaski, entered the victim's darkened house, shot the victim once in the head while she lay asleep in her bed, and started two fires, one in the victim's bedroom, and a second fire in a downstairs bedroom, to conceal his crime. Facts which may allow a jury to infer premeditation and an intentional act include:

> (1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, planning activity;
>
> (2) facts about the defendant's prior relationship and conduct with the victim from which motive may be inferred; and
>
> (3) facts about the nature of the killing from which it may be inferred that the manner of the killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design.

State v. Bordis, 905 S.W.2d 214, 222 (Tenn. Crim. App. 1995).

A. Gun Purchased on April 21, 2000

Defendant argues that the trial court erred in denying his motion to suppress the Phoenix Arms .25 caliber gun which Defendant purchased on April 21, 2000. Defendant contends that the introduction of and testimony concerning the gun, which was not used in the commission of the offense and which was purchased after the victim's death, was not relevant and prejudicial.

In denying Defendant's motion to suppress, the trial court found that "[i]f law enforcement testify in accordance with the prior testimony, the Court finds that Defendant's statements

surrounding his purchase of this pistol, the timing of the purchase, the fact that this is a .25 [caliber] pistol, the fact that a .25 [caliber] pistol was used to kill the alleged victim, the statement by Defendant that this was a replacement pistol for a .25 [caliber pistol] Defendant said he lost on the Saturday prior to the murder, followed by false and misleading information given by him to law enforcement concerning the purchase of his first .25 [caliber pistol] – are all relevant and not excluded by Tenn. R. Evid. 401, 402 or 403."

The proof established that the victim was shot with a .25 caliber bullet which was fired from a gun purchased by Defendant approximately five days before the killing. Defendant purchased a replacement .25 caliber gun approximately two days after the victim's death which provides a logical basis for an inference that Defendant purchased the second gun in an attempt to mislead the investigating officers as to the owner of the murder weapon. Defendant's purchase of a second gun of the same caliber as the murder weapon two days after the victim's death was relevant to demonstrate Defendant's activities after the offense. The trial court properly found that the probative value of the gun purchased on April 21, 2000, was not substantially outweighed by the danger of unfair prejudice.

B. Flashlight

Defendant argues that Ms. Burden's testimony that the flashlight used by the Dynamic Security Services employees was missing on the morning of April 19, 2000, was not relevant because there was no evidence connecting the flashlight with the commission of the offense. The trial court found the evidence relevant and ruled it admissible, stating "[The Court] think[s] that with the connection and time that we are talking about here that is so closely connect[ed], that the jury could draw a reasonable inference from a flashlight they knew was missing the morning and the evening [sic] the defendant returns with it." The trial court found that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. The fact that a flashlight was discovered missing from Defendant's workplace on April 19, 2000, a few hours after the killing, and returned by Defendant after the victim's death, supports a rational inference that Defendant used the flashlight to enter the victim's home in darkness. Based on our review, we cannot conclude that the trial court abused its discretion in admitting the evidence.

C. Demeanor Testimony

Defendant argues that the trial court erred in admitting testimony concerning his demeanor during his telephone conversation with his father on April 19, 2000. The trial court found that Mr. Asher's proposed testimony concerning his personal observation of Defendant's demeanor during his father's revelation of the victim's death was "relevant to show lack of surprise. It [was] relevant to show state of mind upon learning of the death of his mother." A jury may infer premeditation from the nature and circumstances surrounding the killing. *State v. Jackson*, 173 S.W.3d 401, 408 (Tenn. 2005). Mr. Asher's testimony was relevant to the issue of the identity of Defendant as the perpetrator (lack of surprise), and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Thus, we conclude that the trial court did not abuse its discretion in allowing the State to introduce this evidence.

V. Imposition of Consecutive Sentencing

Erroneously relying on *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), *see State v. Gomez*, 163 S.W.3d 632 (Tenn. 2005), the trial court found that no enhancement factors were appropriate for consideration because Defendant did not have a history of prior criminal convictions. Accordingly, the trial court sentenced Defendant to twenty years as a Range I, standard offender, for his aggravated arson conviction, a Class A felony. Defendant does not challenge the length of his sentence. Defendant contends, however, that the trial court erred in imposing consecutive sentencing because the trial court failed to make the requisite *Wilkerson* findings to support Defendant's classification as a dangerous offender. *See* T.C.A. § 40-35-115(b)(4); *State v. Wilkerson*, 905 S.W.2d 933, 939 (Tenn. 1995).

When a defendant challenges the length or the manner of service of his or her sentence, this Court must conduct a *de novo* review with a presumption that the determinations made by the trial court are correct. T.C.A. § 40-35-401(d); *State v. Imfeld*, 70 S.W.3d 698, 704 (Tenn. 2002). This presumption, however, is contingent upon an affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Pettus*, 986 S.W.2d 540, 543-44 (Tenn. 1999). If the record fails to show such consideration, the review of the sentence is purely *de novo*. *State v. Shelton*, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992).

In making its sentencing determinations the trial court must consider: (1) the evidence presented at the sentencing hearing; (2) the pre-sentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct; (5) any appropriate enhancement and mitigating factors; (6) the defendant's potential or lack of potential for rehabilitation or treatment; and (7) any statements made by Defendant in his own behalf. T.C.A. §§ 40-35-103 and -210; *State v. Williams*, 920 S.W.2d 247, 258 (Tenn. Crim. App. 1995). The defendant bears the burden of showing that his sentence is improper. T.C.A. § 40-35-401(d) Sentencing Commission Comments; *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

When a Defendant is convicted of multiple crimes, the trial court, in its discretion, may order the sentences to run consecutively if it finds by a preponderance of the evidence that a defendant falls into one of seven categories listed in Tennessee Code Annotated section 40-35-115. In this instance, the trial court found that Defendant was "a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high." Tenn. Code Ann. §40-35-115(a)(4). If the trial court rests its determination of consecutive sentencing on this category, the court must make two additional findings. *Imfeld*, 70 S.W.3d at 708. First, the trial court must find that an extended sentence is necessary to protect the public from further criminal conduct by Defendant, and, second, it must find consecutive sentencing to be reasonably related to the severity of the offenses. *Wilkerson*, 905 S.W.2d at 939. Although such specific factual findings are unnecessary for the other categories enumerated in Tennessee Code Annotated section 40-35-115(b), the imposition of consecutive sentences is also guided by the general sentencing principles that the length of a sentence be "'justly deserved in relation to the seriousness of the offense' and 'no greater than that deserved for the offense committed.'" *Imfeld*,

70 S.W.3d at 708 (quoting Tenn. Code Ann. §§ 40-35-102(1) and -103(2)); *State v. Lane*, 3 S.W.3d 456, 461 (Tenn. 1999).

Although the trial court did not specifically refer to *Wilkerson*, based on our review of the record, we conclude that the trial court made adequate findings to support Defendant's classification as a dangerous offender for purposes of consecutive sentencing. The trial court found that the circumstances surrounding the offense made Defendant's crime "especially violent, horrifying, shocking and reprehensible." The trial court stated:

> [T]his defendant indicates a total and clear disregard for the laws and morals of society. The Court does not believe anything that [Defendant] said at trial. His credibility is gravely at issue. The Court finds and agrees with the jury that [Defendant] killed his mother and then tried to set the house on fire to hide the crime. This defendant fails to accept responsibilit[y] for this crime.

The trial court found that Defendant's act of arson was "the cold blooded attempt to burn that house down and conceal that murder, with his mother dead in that bedroom" without regard to the dangers faced by the firemen in attempting to extinguish the blaze and other persons in the vicinity of the fire.

Implicit within the trial court's findings is the unarticulated conclusion that the public is deserving of future protection from Defendant, and consecutive sentencing reasonably relates to the severity of the crimes committed. We conclude that the trial court's imposition of consecutive sentencing is congruent with the general sentencing principles, is reasonably related to the seriousness of the offenses, and is no greater than that deserved for the offense committed. Defendant is not entitled to relief on this issue.

CONCLUSION

After a thorough review of the record, we affirm the judgments of the trial court.

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THOMAS T. WOODALL, JUDGE